TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 838

FREDERICK L. MOREHEAD, AS WARDEN OF THE CITY PRISON OF THE BOROUGH OF BROOKLYN, PETITIONER,

vs.

PEOPLE EX REL. JOSEPH TIPALDO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED MARCH 16, 1936.

CERTIORARI GRANTED MARCH 30, 1936.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN COURT OF APPEALS OF NEW YORK

PEOPLE EX REL. JOSEPH TIPALDO, Relator-Appellant,

against

FREDERICK L. MOREHEAD, as the Warden of the City Prison in the Borough of Brooklyn, Respondent

STATEMENT UNDER RULE 41

This is a habeas corpus proceeding, instituted at Special Term of the Supreme Court, Kings County, on April 30th, 1935, to test the legality of the imprisonment of the relator. The relator was held in custody by the respondent in pursuance of an indictment by the Grand Jury of Kings County for an alleged violation of a mandatory order issued by the Industrial Commissioner under Article 19 of the Labor Law, popularly known as the Minimum Wage Law for Women and Minors (Laws of 1933, Chapter 584, in effect April 29th, 1933). The only question raised by the relator in this proceeding is addressed to the constitutionality of the statute for the violation of which he is held for trial, his contention being that the same contravenes the 14th Amend-
[fol. 2] ment to the Constitution of the United States and Article 1, Section 6 of the Constitution of the State of New York. A hearing was had herein before the Hon. Mitchell May, at Special Term, Part II of the Supreme Court, Kings County, on April 30th, 1935. On July 3rd, 1935, an order was entered by the Hon. Mitchell May dismissing the writ herein and directing that the relator be continued in bail to await his trial under the indictment aforesaid. On August 5th, 1935, the relator served and filed a notice of appeal to this Court from the order aforesaid. By order dated August 16th, 1935, the Hon. Frederick E. Crane, Chief Judge of this Court, certified that a constitutional question is involved in this appeal and that this appeal may be taken without the security required by Section 593 of the Civil Practice Act.

Messrs. Goldberg & Levitt, are the attorneys for the relator and the Hon. John J. Bennett, Jr., Attorney General of the State of New York, appears for the respondent. The

original parties and attorneys are as above, and there has been no change of parties or attorneys since the commencement of this proceeding.

[fol. 3] In Supreme Court of New York, County of Kings

[Title omitted]

Notice of Appeal to Court of Appeals

Sirs:

Please take notice, that Joseph Tipaldo, the above-named relator, hereby appeals to the Court of Appeals from the order made by the Hon. Mitchell May herein on July 3rd, 1935, and entered in the office of the Clerk of the County of Kings on said day, whereby the above entitled habeas corpus proceeding was dismissed and the bail of the relator continued pending his trial in the County Court of Kings County under indictment No. 8566 B; and that the only question involved upon this appeal is the validity of the statute, for the violation of which the relator was indicted, under the Constitution of the State of New York and of the United States.

Dated, New York City, August 2nd, 1935.

Goldberg & Levitt, Attorneys for Relator-Appellant, 415 Lexington Avenue, New York City.

[fol. 4] To John J. Bennett, Jr., Attorney General of the State of New York. John N. Harman, Esq., Clerk of the County of Kings.

In Supreme Court of New York, County of Kings

[Title omitted]

Writ of Habeas Corpus

The People of the State of New York, to Frederick L. Morehead as the Warden of the City Prison in the Borough of Brooklyn:

We command you that you have the body of Joseph Tipaldo, by you imprisoned and detained, as it is said, to-

gether with the time and cause of such imprisonment and detention, by whatsoever name the said Joseph Tipaldo [fol. 5] is called or charged, before the Supreme Court at a Special Term, Part II thereof, to be held in and for the County of Kings, at the County Court House, Borough Hall, in the Borough of Brooklyn, City and State of New York, on the 30th day of April, 1935, at 2:30 o'clock in the afternoon of that day, to do and receive what shall then and there be considered, concerning the said Joseph Tipaldo. And have you then there this writ.

Witness, the Honorable Mitchell May, one of the Justices of the said Supreme Court the 30th day of April, in the year nineteen hundred and thirty-five.

John N. Harman, Clerk.

Let the foregoing writ issue.
April 30, 1935.

Mitchell May, Justice of the Supreme Court. Goldberg & Levitt, Attorneys for Relator, 415 Lexington Avenue, New York City.

[fol. 6] In Supreme Court of New York, County of Kings

[Title omitted]

Petition for Writ of Habeas Corpus

To the Honorable, the Supreme Court of the State of New York:

Your petitioner respectfully alleges and shows:

1. That Joseph Tipaldo, the petitioner, makes application herein on his own behalf for a writ of habeas corpus. That the place where the said Joseph Tipaldo is imprisoned and restrained of his liberty is the City Prison in the Borough of Brooklyn, County of Kings, City and State of New York. That the officer by whom he is so imprisoned and restrained is Frederick L. Morehead, the Warden of the aforesaid City Prison.

2. That the said Joseph Tipaldo has not been committed and is not detained by virtue of a judgment, decree, final

order, mandate or process specified in Section 1231 of the Civil Practice Act.

[fol. 7] 3. That the cause or pretense of the imprisonment and restraint of the said Joseph Tipaldo is that he has been indicted by the Grand Jury of Kings County for an alleged violation of a mandatory order issued by the Industrial Commissioner under Article 19 of the Labor Law, commonly known as the minimum wage law for women and minors (Laws of 1933, Chapter 584, in effect April 29th, 1933). The indictment under which the petitioner was indicted charges that the petitioner, as manager of the Spotlight Laundry in the County of Kings, disobeyed a mandatory order prescribing certain minimum wages for certain adult women employees of the said laundry. It is further charged that the petitioner conspired to make false entries in the time book of the said laundry for the purpose of making it appear that the said adult women employees did in fact receive the amount of wages ordered to be paid by the Industrial Commissioner.

4. That the imprisonment and restraint of the said Joseph Tipaldo is illegal in that he is being held for trial under indictments which charge the violation of a law which contravenes the Fourteenth Amendment to the Constitution of the United States and Article I, Section 6 of the Constitution of the State of New York in that the same operates as a deprivation of liberty or property without due process of law and also operates to compel the petitioner to be a witness against himself in a criminal case.

a) The petitioner does not question the constitutionality of the law in question in so far as the same purports to [fol. 8] fix a minimum wage for minors. He does, however, charge that the same is unconstitutional and violative of both the Federal and the State Constitutions in so far as the same purports to prescribe a minimum wage for adult women. In that regard the petitioner respectfully directs attention to the holding of the Supreme Court of the United States which tribunal is the final interpreter of the Constitution of the United States. The petitioner is informed that the Supreme Court had before it a statute substantially identical with that under which he is now imprisoned. In the case of Adkins v. Childrens Hospital, 261

U. S. 525, 24 A. L. R. 1238, 43 Sup. Ct. Rep. 394. That the determination of the Supreme Court of the United States in that case applies with full force and effect to State legislation which purports to fix a minimum wage for adult women was decided in the case of Topeka Laundry Co. v. Court of Industrial Relations, 119 Kan., 12, 237 Pac. 1041, 47 A. L. R. 208.

5. That in addition to the constitutional defects pointed out in the cases above cited, Article 19 of the Labor Law violates the Fifth Amendment to the Constitution of the United States, as well as Article I, Section 6 of the Constitution of the State of New York in that the said law empowers the Industrial Commissioner or his representative "to enter the place of business or employment of any employer of women and minors in any case for the purpose of [fol. 9] examining and inspecting any and all books, registers, payrolls and other records of any employer of women or minors that in any way appertain to or have a bearing upon the question of wages of any such women or minors and for the purpose of ascertaining whether the orders of the Commissioner have been and are being complied with" (Section 553). The refusal to permit an examination of books and records under this section is made a crime (Section 565). In this fashion a person is virtually compelled to give evidence against himself in a criminal case.

6. That no previous application has been made for the writ herein asked for.

7. That no appeal has been taken from any order or judgment in any action or proceeding against the said Joseph Tipaldo whereby he has been imprisoned or restrained of his liberty.

Wherefore, your petitioner prays that a writ of habeas corpus directed to the said Frederick L. Morehead issue for the purpose of inquiring into the cause of the imprisonment and restraint of the said Joseph Tipaldo and of delivering him therefrom, pursuant to the statute in such case made and provided.

Joseph Tipaldo, Petitioner.

[fol. 10] *Duly sworn to by Joseph Tipaldo. Jurat omitted in printing.*

[fol. 11] In Supreme Court of New York, County of Kings

[Title omitted]

Return to Writ of Habeas Corpus

To the Honorable Mitchell May or any Justice of the Supreme Court, State of New York, County of Kings:

Obedient to the Commands of the Writ allowed and served upon me, and hereby annexed:

I hereby certify and return that when the said Writ came to me and on the 30th day of April, 1935, the said Joseph Tipaldo named therein was and still is in my custody and detained by me as Warden of the City Prison of the City of New York, Borough of Brooklyn, in the County of Kings, under and by virtue of a mandate, order and commitment, bearing date the 30th day of April, 1935, made by County Judge Honorable Algeron I. Nova, Judge of the County Court of Kings County, New York, and for no other cause.

Annexed hereto and made part of this return is a copy of the original mandate, order and commitment, which original order, mandate and commitment I now produce and I [fol. 12] have here the body of said Joseph Tipaldo as by said writ I am commanded.

Dated, Brooklyn, New York, April 30, 1935.

F. L. Morehead, Warden, City Prison, City of New York, Borough of Brooklyn.

In County Court of Kings County

Present—Hon. Algeron I. Nova, County Judge.

The People of the State of New York

against

Joseph Tipaldo

Indicted for Forgery—Third Degree

Order Remanding for Trial—April 30, 1935

It is ordered by the Court that the said Joseph Tipaldo be and is hereby committed to the custody of the Commis-

[fol. 13] sioner of Correction, City of New York, to be by him detained in the Common Jail of the County of Kings, for recall for trial when directed.

A true extract of the minutes.

Bail fixed at $—.

John N. Harmon, Clerk.

In Supreme Court of New York, Kings County

Present—Hon. Mitchell May, Justice.

People ex Rel. Joseph Tipaldo, Relator-Appellant,

against

Frederick L. Morehead, as the Warden of the City Prison in the Borough of Brooklyn, Respondent

Order Appealed From—July 3, 1935

Upon the petition for a writ of habeas corpus herein filed and the writ of habeas corpus thereon issued, and [fol. 14] upon the return thereto, also filed, and upon the proceedings had before this Court, and after hearing Goldberg & Levitt, Esqs., attorneys for the relator, upon the motion to discharge the relator and John J. Bennett, Jr., Attorney General of the State of New York, by John F. X. McGohey, Assistant Attorney General in opposition thereto, it is

Ordered that the said writ of habeas corpus be and the same is hereby dismissed, and that bail in the amount of Two thousand five hundred dollars ($2,500) heretofore set by this Court be and the same is continued until the trial of the relator under Indictment No. 8566 B, returned in the County Court of the County of Kings against the said relator and others and that the relator not depart the said County Court without leave and abide by the judgment and order of the Court.

Enter.

Mitchell May, J. S. C.

Granted July 3, 1935. John N. Harman, Clerk.

[fol. 15] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

ORDER CERTIFYING THAT A CONSTITUTIONAL QUESTION IS INVOLVED

Upon reading the petition of the above-named relator, dated April 30th, 1935, the writ of habeas corpus issued thereon on said day, the return to the said writ made by the above-named respondent, the order made by the Hon. Mitchell May, at Special Term of the Supreme Court, Kings County, on July 3rd, 1935, dismissing the said writ and continuing the bail of the relator, the notice of appeal to the Court of Appeals from the said order, which said notice bears date August 1, 1935, the annexed affidavit of Harry Goldberg, verified August 1st, 1935, from which it appears that the only question involved upon this appeal is the validity of the statute, for the violation of which the relator was indicted, under the Constitutions of the State of New York and of the United States.

The undersigned, Chief Judge of the Court of Appeals, does hereby certify, that a constitutional question is in-
[fol. 16] volved in this appeal, to wit, the constitutionality of Article 19 of the Labor Law of the State of New York, commonly known as the minimum wage law for women and minors, and that this appeal may be taken without the security required by Section 593 of the Civil Practice Act.

Dated, Brooklyn, N. Y., August 16th, 1935.

Frederick E. Crane, Chief Judge of the Court of Appeals.

IN SUPREME COURT OF NEW YORK

OPINION OF HON. MITCHELL MAY

People ex rel. Tipaldo v. Morehead.—This is a proceeding by habeas corpus instituted by the relator to test the validity of a new article added to the Labor Law known as article 19, passed by the Legislature in 1933 and entitled "Minimum Fair Wage for Women and Children." The relator is imprisoned under an indictment which charges in substance that he, as manager of a laundry in Brooklyn,

paid adult women employees a lesser sum than the minimum wage fixed for that class of employees by the Industrial Commissioner pursuant to the provisions of the act. He asserts that the statute contravenes the 14th Amendment of the Federal Constitution and article 1, section 6, of the Constitution of the State of New York, in that it operates to deprive him of liberty and property without due process of law, and also operates to compel him to be a witness against himself in a criminal case.

[fol. 17] Section 550, the first section of the new article, recites the factual situation which, in the opinion of the Legislature, justified the enactment as a valid exercise of the police power. These recitals are in substance as follows: That the employment of women and minors in trade and industry in this state at wages unreasonably low and not fairly commensurate with the value of the services rendered is a matter of "grave and vital concern"; that many women and minors so employed are not as a class upon a level of equality in bargaining with their employers in regard to "minimum fair wage standards," and "freedom of contract" as applied to their relations with their employers is illusory; that since a very large percentage of such workers are obliged to support themselves and others from their weekly wages they are by reason of their "necessitous circumstances" forced to accept whatever wages are offered them; that judged by any reasonable standard wages in many cases are fixed by "chance and caprice" and bear no relation to the fair value of the services rendered. The remaining portion of the section reads as follows: " * * * Women and minors employed for gain are peculiarly subject to the overreaching of inefficient, harsh or ignorant employers and under unregulated competition, where no adequate machinery exists for the effective regulation and maintenance of minimum fair wage standards, the standards such as exist tend to be set by the least conscionable employers. In the absence of any effective minimum fair wage rates for women and minors, the constant lowering of wages by unscrupulous employers [fol. 18] constitutes a serious form of unfair competition against other employers, reduces the purchasing power of the workers and threatens the stability of industry. The evils of oppressive, unreasonable and unfair wages as they

affect women and minors employed in the state of New York are such as to render imperative the exercise of the police power of the state for the protection of industry and of the women and minors employed therein and of the public interest of the community at large in their health and well-being and in the prevention of the deterioration of the race. In the considered judgment of the Legislature this article is constitutional."

The statutes defines an "oppressive and unreasonable wage" and a "fair wage," and section 552 declares it to be against public policy to employ any woman or minor in an occupation in this state at an oppressive and unreasonable wage as defined by the foregoing provisions. By other provisions there is set up a comprehensive scheme with adequate machinery to carry into effect the purpose of the act.

The underlying thought of relator's contention appears to be that the right of freedom of contract emanates from the Fifth Amendment to the United States Constitution, which provides that no person shall be deprived of life, liberty or property without due process of law; and consequently that the minimum wage law here under consideration, in that it deprives an adult woman in full possession of her normal faculties of the right freely to contract with reference to her services, violates the similar inhibition upon states found in the due process clause of the Fourteenth Amendment.

[fol. 19] In support of his contention relator relies principally upon the case of Adkins v. Children's Hospital (261 U. S. 525). In that case the court decreed the unconstitutionality of an act fixing the minimum wages for women and children in the District of Columbia. The court there asserted that it was no longer open to question that the right to contract with reference to one's affairs is a part of the liberty of the individual which is protected by the due process clause of the Fifth Amendment, that included in the right of personal liberty and private property is the right to contract for the acquisition of property, and that chief among such contracts is that of personal employment whereby labor and other services are exchanged for money or other forms of property. After reference to decisions, sustaining the validity of statutes relating to businesses "impresed with a public

interest" and to decisions relating to statutes limiting the hours of labor in certain industries, including the case of Muller v. Oregon (208 U. S. 412), the court wrote as follows: "* * * But the ancient inequality of the sexes, otherwise than physical, as suggested in the Muller case (p. 421) has continued 'with diminishing intensity.' In view of the great—not to say revolutionary—changes which have taken place since that utterance, in the contractual, political and civil status of women, culminating in the Nineteenth Amendment, it is not unreasonable to say that these differences have now come almost, if not quite, to the vanishing point. In this aspect of the matter, while the physical differences must be recognized in appropriate cases, and legislation fixing hours or conditions [fol. 20] of work may properly take them into account, we cannot accept the doctrine that women of mature age, sui juris, require or may be subjected to restrictions upon their liberty of contract which could not lawfully be imposed in the case of men under similar circumstances. To do so would be to ignore all the implications to be drawn from the present day trend of legislation, as well as that of common thought and usage, by which woman is accorded emancipation from the old doctrine that she must be given special protection or be subjected to special restraint in her contractual and civil relationships. * * *"

Notwithstanding the force and cogency of this reasoning, this court is not prepared to assert that the Adkins case is an authority which impellingly necessitates an adjudication of the invalidity of the statute here involved. It is of special significance that in the Adkins case, with reference to the conception of liberty as involved in the words "right of contract" the court wrote: "'And interference with this liberty so serious as that now under consideration, and so disturbing of equality of right, must be deemed to be arbitrary, *unless it be supportable as a reasonable exercise of the police power of the State.*'" (Italics ours.) And again with reference to freedom of contract the court wrote: "There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints. But freedom of contract is, nevertheless, the general rule and restraint the exception; *and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances* * * *." (Italics ours.)

[fol. 21] Here is a distinct and unequivocal pronouncement that a reasonable exercise of the police power may work an interference with liberty of contract that is not necessarily to be deemed arbitrary, and that an abridgement of that right may be justified by "exceptional circumstances."

The primary question here involved is whether, within the purview of the principles thus enunciated, the interference with the right to contract, effected by the minimum wage law may be justified as an exercise of the police power, reasonable because justified by existing conditions, or to state it otherwise, whether the abridgement of freedom of contract may be sanctioned "by the existence of exceptional circumstances" within the rule above stated.

An attempt to exhaustively review the substance of oral and written characterizations of the effect of the world-wide depression would serve no useful purpose. The court may take judicial notice that almost without warning it came upon mankind with an unforeseen and irresistible onrush that bound and fettered the world in its devastating grip. Business collapsed; our conceptions of economic and social securities were shattered, peace of mind was transformed into dread apprehension, contentment into unrest, comfort gave way to hardship and sufficiency to privation. As a result of this universal catastrophe, thousands of women reared to a life of ease, maintained in comfortable surroundings, inexperienced with the hardship of poverty, with no occupational training and with no business experience, suddenly found themselves engulfed in the whirlpool of indus-[fol. 22] trial strife, forced there by a calamity of hitherto unknown magnitude, compelled to there engage in a merciless and to them unfamiliar competition.

Do the dictates of reason and the common experience of mankind impel the conclusion that under these conditions these women are on a parity with men in their ability to distinguish between legitimate and unscrupulous business practices, between the honest and dishonest employer, between fair dealing and chicanery, between "an oppressive and unreasonable wage" and a "fair wage" as defined in the act? The Legislature has answered the inquiry in the negative as evidenced by the last sentence in section 550, which reads: "In the considered judgment of the Legislature this article is constitutional."

This declaration, unusual in a statute, indicates a legislative familiarity with the decisions of the higher courts with reference to legislation of this general character and amounts to a pronouncement that in the Legislature's opinion, the act in so far as it interferes with liberty of contract, is justified as a reasonable exercise of the police power by the existence of these "exceptional circumstances."

The act evidences a humane legislative intent to ameliorate human distress by affording a measure of security to women who, by reason of unprecedented adverse conditions existing at the time, were unable to adequately protect themselves in an industrial life in which, as compared with men, they were at a disadvantage. Thus, its ultimate purpose was to protect women from unscrupulous employers through the medium of a compulsory wage reasonably commensurate with the services rendered, and also to pro- [fol. 23] tect industry from evils which are frequently followed by unfair competition made possible by the exploitation of a designated class of employees. It would seem that public welfare is enhanced by legislation based upon humane consideration of this character, legislation justified as an exercise of the police power. The Adkins case was decided at the time of an era of comparative prosperity. This court is not prepared to assert that the same conclusion would have been reached had economic and industrial conditions then been as they were at the time of the enactment here involved.

The police power is inherently vested in the Legislature. It was never surrendered by the several states and consequently its free exercise is not necessarily impeded by the 14th Amendment to the Federal Constitution. Through the exercise of this power "the state may regulate the relative rights and duties of all persons within its jurisdiction, so as to guard the public safety, protect the public morals, secure the public welfare and promote the common good and welfare" (People v. Byrne, 99 Misc. 1; Jacobson v. Mass., 197 U. S. 11, p. 25; People v. Adirondack R'y Co., 160 N. Y. 225, p. 236).

In the case last cited, in speaking of the power of taxation, the police power and the power of eminent domain, the court said that these powers "* * * underlie the Constitution and rest upon necessity, because there can be no effec-

tive government without them. They are not conferred by the Constitution, but exist because the state exists, and they are essential to its existence. They are not rights reserved, but rights inherent in the state as sovereign. While they [fol. 24] may be limited and regulated by the constitution, they exist independently of it as a necessary attribute of sovereignity. They belong to the state because it is sovereign, and they are a necessity of government. The state cannot surrender them, because it cannot surrender a sovereign power. It cannot be a state without them. They are as enduring and indestructible as the state itself."

Other well established legal principles are pertinent to the present inquiry.

Thus it is held that to warrant a court in declaring an act unconstitutional, the conflict between the statute and the constitution must be "plain and unmistakable" and "that every presumption is in favor of the validity of a legislative enactment" (People, &c., v. Ryan, 230 A. D. 252, p. 254; City of Buffalo v. Hawks, 226 A. D. 480, p. 485, aff'd. 251 N. Y. 588; People, &c., v. Carter & Rice, 135 N. Y. 473, p. 484; Gardner v. Genther, 232 A. D. 296, p. 298, aff'd 257 N. Y. 578).

And if a reasonable doubt exists as to its validity the act should be upheld. Every reasonable doubt must be resolved in favor of its validity (City of Buffalo v. Hawks, supra; Gardner v. Genther, supra).

Moreover, the acts of a Legislature are presumed to be "within its constitutional authority unless the contrary clearly appears" (Schieffelin v. Goldsmith, 253 N. Y. 243, p. 249; Matter of McAneny v. Board, 232 N. Y. 377, p. 389; People ex rel. Cotte v. Gilbert, 226 N. Y. 103, p. 106.

It is also the rule that one who asserts the invalidity of a statute or a classification must prove his contention (People [fol. 25] &c., v. Byrne, supra; Borden's Farm Products Co. v. Baldwin, 293 U. S. 194).

It has also been stated that: "As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute" (O'Gorman v. Insurance Company, 282 U. S. 251, p. 257-8; People &c., v. Katz, 140 Misc. 46, p. 47).

No proof of facts is here adduced in contradiction of the factual situation declared to exist by the Legislature.

These facts so deemed to exist form the basis for the conclusion that this legislation is not unconstitutional as exceeding the permissible bounds of the exercise of the police power, and it would not appear that it may be so decreed as matter of law.

Although the question is not here raised it may not be inappropriate to say that it does not appear that the minimum wage law evidences an unwarranted delegation of Legislature power to an administrative board or body. The act does not authorize the exercise of unlimited discretion in an undefined field. On the contrary a standard is prescribed. That standard is found in the definition of "a fair wage," which limits the authorized discretion of the administrative body within the confines indicated by the definition. In this respect the act is not defective for the reasons advanced in the recent decision of the United States Supreme Court in the Schechter case.

Without doubt, this legislation was prompted by humane and beneficent considerations. The intent was to protect a [fol. 26] designated class from injustice and exploitation, thereby also promoting the public welfare by diminishing one cause of unfair competition with its resulting industrial chaos.

The writ is accordingly dismissed.

IN SUPREME COURT OF NEW YORK

WAIVER OF CERTIFICATION

It is hereby stipulated, by and between the attorneys for the respective parties hereto, pursuant to Section 170 of the Civil Practice, Act, that the foregoing are true and correct copies of the notice of appeal, the order certifying that a constitutional question is involved, the order appealed from, and of all of the papers used upon the hearing of the writ of habeas corpus and upon which the said order appealed from was made, and of the whole thereof, now on file in the office of the Clerk of the County of Kings and that the appeal herein be heard upon the foregoing record without certification thereof which is hereby waived.

Dated, N. Y., October 29, 1935.

Goldberg & Levitt, Attorneys for Relator-Appellant.
John J. Bennett, Jr., Attorney General of the State of New York, Attorney for Respondent.

T. C. 12/6/35. E. B.

[fol. 27] STATE OF NEW YORK,
County of Kings, ss:

I, John N. Harman, Clerk of the County of Kings and Clerk of the Supreme Court of the State of New York in and for said County (said Court being a Court of Record) do hereby certify that I have compared the annexed with the original Notice of Appeal filed in my office — Order appealed from and all papers on which said order is based and that the same is a true transcript thereof and to the whole of such original.

(For Attorney General—no fee.)

In Testimony Whereof, I have hereunder set my hand and affixed the seal of said County and Court, this 9 day of March, 1936.

John N. Harman, Clerk. (Seal Kings County.)

[fol. 28] COURT OF APPEALS

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 3rd day of March, in the year of Our Lord One Thousand Nine Hundred and Thirty-Six, before the Judges of said Court.

Witness: The Hon. Frederick E. Crane, Chief Judge, Presiding. William J. Armstrong, Clerk.

PEOPLE ex Rel. JOSEPH TIPALDO, Relator-Appellant,

against

FREDERICK L. MOREHEAD, as the Warden of the City Prison, in the Borough of Brooklyn, Respondent

REMITTITUR—March 4th, 1936

[fol. 29] Be it remembered, that on the 6th day of December, in the year of Our Lord One Thousand Nine Hundred and Thirty-Five, Joseph Tipaldo, the appellant in this cause, came here into the Court of Appeals by Goldberg & Levitt, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Supreme Court, Kings County, and Frederick L. Morehead, as Warden of the City Prison, in the Borough of Brooklyn, the

respondent in said cause, afterwards appeared in said Court of Appeals by John J. Bennett, Jr., Attorney General.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed. The Court of Appeals having heard this cause argued by Mr. Nathan L. Miller, of counsel for the appellant; and by Mr. Henry Epstein, for the respondent; and by Mr. Charles J. Campbell, for New York State Hotel Association, as amicus curiæ; brief filed by other amici curiæ; and after due deliberation had thereon, did order and adjudge that the order of the Supreme Court appealed from herein be, and the same hereby is reversed, the writ sustained and the prisoner discharged. A question under the Federal Constitution was presented [fol. 30] and necessarily passed upon by this Court, viz. that Chapter 584 of the Laws of 1933 of the State of New York contravenes the 14th Amendment of the Constitution of the United States. This Court held that the aforesaid statute does contravene the 14th Amendment of the Constitution of the United States (Adkin vs. Childrens Hospital, 261 U. S. 525).

And it was also further ordered that the record aforesaid and the proceedings in this Court be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be reversed, the writ sustained and the prisoner discharged, etc. as aforesaid.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, be it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided to be enforced according to law and which record now remains in the said [fol. 31] Supreme Court before the Justices thereof, etc.

(Signed) John Ludden, Deputy Clerk of the Court of Appeals of the State of New York. (Seal.)

Court of Appeals, Clerk's Office, Albany, March 4th, 1936.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein; attached thereto.

John Ludden, Deputy Clerk.

[fol. 32] [Stamp:] Office of the Clerk, Supreme Court, U. S., Received Mar. 14, 1936

At a special term, Part II, of the New York Supreme Court, held in and for the County of Kings, at the County Courthouse, in the Borough of Brooklyn, City of New York, this 6th day of March, 1936.

Present: Hon. Peter P. Smith, Justice.

PEOPLE ex Rel. JOSEPH TIPALDO, Relator-Appellant,

against

FREDERICK L. MOREHEAD, as the Warden of the City Prison in the Borough of Brooklyn, Respondent

The above named Relator having appealed to the Court of Appeals from the order made by the Hon. Mitchell May on July 3rd, 1935, and entered in the office of the Clerk of the County of Kings, on the said day, whereby the above entitled habeas corpus proceeding was dismissed, and the Court of Appeals having heard said appeal, and ordered and adjudged that the order so appealed from be reversed, the writ of habeas corpus sustained and the Relator discharged from custody, and the record remitted from that Court, having been filed, from which it appears that a question under the Federal Constitution was presented and necessarily passed upon by the Court of Appeals, viz, that Chapter 584, Laws of 1933 of the State of New York con-
[fol. 33] travenes the 14th Amendment of the Constitution of the United States and that the Court of Appeals held that the aforesaid statute does contravene the 14th Amendment of the Constitution of the United States (Adkins v. Childrens Hospital, 261 U. S. 525),

Now, on motion of Gates & Levitt, attorneys for the Relator, it is

Ordered, that the said judgment of the Court of Appeals be and the same is hereby made the judgment of this Court.

Enter.

(Signed) Peter P. Smith, J. S. C.

Granted Mar. 6, 1936. John N. Harman, Clerk.

O. K. 3/7/36. J. D.

STATE OF NEW YORK,
County of Kings, ss:

I, John N. Harman, Clerk of the County of Kings and Clerk of the Supreme Court of the State of New York in and for said County (said Court being a Court of Record) do hereby certify that I have compared the annexed with the original Order filed in my office Mar. 7, 1936, and that the same is a true transcript thereof and to the whole of such original.

(For Attorney General— no fee.)

In Testimony Whereof, I have hereunder set my hand and affixed the seal of said County and Court, this 9 day of March, 1936.

John N. Harman, Clerk.

[fol. 34] [Endorsed:] Index # 13595/1935. Supreme Court, County of Kings. People ex rel. Joseph Tipaldo, Relator-Appellant, against Frederick L. Morehead, as the Warden of the City Prison in the Borough of Brooklyn, Respondent. Original Order. John J. Bennett, Jr., Attorney-General, Attorney for Respondent, Office and Post Office Address: Capitol, Albany, N. Y., New York Office, 80 Centre Street, New York, N. Y. Personal service of a copy of within — is admitted this — day of ——, 193-.

[fol. 35] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 30, 1936

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter Henry Epstein. File No. 40,392. New York Supreme Court. Term No. 838. Frederick L. Morehead, as Warden of the City Prison of the Borough of Brooklyn, petitioner, vs. People ex rel. Joseph Tipaldo. Petition for a writ of certiorari and exhibit thereto. Filed March 16, 1936. Term No. 838, O. T., 1935.